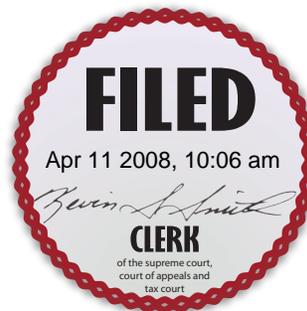


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF A.G. AND M.G.,)

M.G., Father,)
Appellant-Respondent,)

vs.)

HAMILTON COUNTY DEPARTMENT)
OF CHILD SERVICES,)
Appellee-Petitioner.)

No. 29A02-0710-JV-891

APPEAL FROM THE HAMILTON CIRCUIT COURT
The Honorable Judith S. Proffitt, Judge
The Honorable Todd L. Ruetz, Master Commissioner
Cause No. 29C01-0612-JC-1791

April 11, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent M.G. (“Father”) appeals the trial court’s denial of his Motion to Dismiss a petition by Hamilton County Department of Child Services (“HCDCS”) alleging his children, A.G. and M.G., to be children in need of services (“CHINS”). Father contends that the trial court lacks subject matter jurisdiction over the pending matters because it failed to conduct a fact-finding hearing within the statutorily prescribed time limitations set forth in Indiana Code section 31-34-11-1 (2006). Concluding that the trial court lacked subject matter jurisdiction, we reverse.

FACTS AND PROCEDURAL HISTORY

On December 7, 2006, the HCDCS filed petitions alleging that A.G. and M.G. were CHINS. On January 29, 2007, the trial court conducted initial hearings at which Father denied the allegations levied against him in the CHINS petitions. The trial court set the matters for a contested fact-finding hearing on March 1, 2007.

On March 1, 2007, the parties appeared for a status conference, and the trial court reset the fact-finding hearing for April 23, 2007. On April 23, 2007, Father, through his newly-acquired counsel, requested a continuance. The trial court reset the fact-finding hearing for July 16, 2007. On May 11, 2007, due to the unavailability of the court commissioner, the trial court continued the fact-finding hearing to August 20, 2007. On August 20, 2007, the trial court rescheduled the fact-finding hearing to either October 2 or October 29, 2007.

On August 23, 2007, Father filed a motion to dismiss the CHINS petitions for failure to timely conduct a fact-finding hearing pursuant to Indiana Code section 31-34-11-1. The HCDCS filed its response on September 7, 2007, and Father filed his reply on

September 10, 2007. The trial court denied Father's motion to dismiss on September 11, 2007. Father sought permission from the trial court to file an interlocutory appeal on September 25, 2007, which was granted on October 1, 2007. On November 19, 2007, this court accepted jurisdiction of these matters.

DISCUSSION AND DECISION

We initially note that our disposition of the issue has been made more difficult by the fact that the HCDCS did not file an appellee's brief. Accordingly, we do not undertake the burden of developing arguments for the appellee, as that duty remains with the appellee. *In re Paternity of M.M.B.*, 877 N.E.2d 1239, 1242 (Ind. Ct. App. 2007). Indiana courts have long applied a less stringent standard of review and may reverse the trial court when the appellant establishes *prima facie* error. *Id.* In this context, "*prima facie*" means "at first sight, on first appearance, or on the face of it." *Johnson County Rural Elec. Membership Corp. v. Burnell*, 484 N.E.2d 989, 991 (Ind. Ct. App. 1985). "Likewise, the statement of facts contained in [Father]'s brief is deemed by us to be accurate and sufficient for the disposition of this appeal." *Id.*

Jurisdiction

Father contends that the trial court lacks subject matter jurisdiction over the CHINS cases because it failed to conduct a fact-finding hearing within the statutorily prescribed time limits. Subject matter jurisdiction refers to the power of courts to hear and decide a class of cases. *Allen v. Proksch*, 832 N.E.2d 1080, 1095 (Ind. Ct. App. 2005). In order to insure that it has subject matter jurisdiction over a CHINS proceeding, a trial court must strictly comply with the CHINS statutes. *Mafnas v. Owen County*

Office of Family & Children, 699 N.E.2d 1210, 1212 (Ind. Ct. App. 1998), *trans. denied*.

When a court is without jurisdiction, it possesses the power to do nothing except enter an order of dismissal. *Id.* A judgment not authorized by the statute is void, and it is without force or effect. *Id.* at 1212-13.

Indiana Code section 31-34-11-1 governs the requirement of fact-finding hearings in CHINS proceedings and provides the following:

(a) Except as provided in subsection (b), unless the allegations of a petition have been admitted, the juvenile court shall complete a fact-finding hearing not more than sixty (60) days after a petition alleging that a child is a child in need of services is filed in accordance with IC 31-34-9.

(b) The juvenile court may extend the time to complete a fact-finding hearing, as described in subsection (a), for an additional sixty (60) days if all parties in the action consent to the additional time.

Father argues that because the statute contains the word “shall,” the trial court was required to conduct a fact-finding hearing within the time limits set forth in Indiana Code section 31-34-11-1. Here, it is undisputed that the trial court did not conduct a fact-finding hearing within the statutorily prescribed time limits.

This court has previously concluded that even though “a statute containing the word ‘shall’ generally connotes a mandatory as opposed to a discretionary import,” the word “shall” may, in certain instances, “be construed as directory instead of mandatory ‘to prevent the defect of the legislative intent.’” *Parmeter v. Cass County Dept. of Child Services*, 878 N.E.2d 444, 448 (Ind. Ct. App. 2007) (quoting *In re Middlefork Watershead Conservatory Dist.*, 508 N.E.2d 574, 578 (Ind. Ct. App. 1987)). With respect to Indiana Code section 31-34-11-1, we concluded that requiring the dismissal of CHINS proceedings because the trial court failed to conduct a fact-finding hearing within

the statutorily prescribed time limitations would frustrate the legislature's purpose of assisting parents to better fulfill their parental obligations. *Parmeter*, 878 N.E.2d at 448. We therefore concluded that the term "shall" is directory and not mandatory when continuances of fact-finding hearings in CHINS proceedings are needed for legitimate reasons. *Id.* We further concluded that the trial court did not lose jurisdiction over the CHINS cases for failing to hold a fact-finding hearing within sixty days of the filing of the CHINS petitions because the record established that the continuances were needed for legitimate reasons. *Id.*

Here, however, unlike in *Parmeter*, the record is silent as to why a fact-finding hearing was not held within the statutorily prescribed time limitations. Furthermore, in *Parmeter*, the parent requested several continuances before the expiration of the statutorily allotted time limitations. *Id.* at 446. Here, the record does not establish that Father either requested or agreed to any of the initial continuances or extensions. In addition, while he did request one continuance, he did so after the statutorily prescribed time limitations had passed. This request was made more than 130 days after the CHINS petitions were filed.

We recognize pursuant to *Parmeter* that a trial court does not lose jurisdiction over a CHINS proceeding merely because it fails to conduct a fact-finding hearing within the statutorily prescribed time limitations so long as a showing is made that the continuances are needed for legitimate reasons. Here, however, the record fails to make any showing that a continuance beyond the statutorily prescribed time for conducting a fact-finding hearing was needed for legitimate reasons. We therefore conclude that the trial court's

failure to conduct a fact-finding hearing within the statutorily imposed time limitations deprived the court of subject matter jurisdiction over the CHINS proceedings. *See generally Mafnas*, 699 N.E.2d at 1212-13 (providing that a trial court must strictly comply with the CHINS statutes in order to insure that it has subject matter jurisdiction and that the court's jurisdiction is limited to that provided for under the statute). We further conclude that the trial court erred by denying Father's motion to dismiss the CHINS cases.

The judgment of the trial court is reversed.

BARNES, J., and CRONE, J., concur.